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Attorneys for Third Party Defendant,
Louis Moliken

NEW YORK HOTEL TRADES COUNCIL
AND HOTEL ASSOCIATION OF NEW
YORK CITY INC., HEALTH CENTER,
INC., and PETER WARD AND JOSEPH F.
SPINNATO as Trustees of THE NEW
YORK HOTEL TRADES COUNCIL AND
HOTEL ASSOCIATION OF NEW YORK
CITY INC. HEALTH BENEFITS FUNDS,

Plaintiffs

vs.

CHARLES FERRARA, in his capacity as
the Executor of the Estate of CHARLES J.
RAIMONDO, CHARLES RAIMONDO,
JR., JACEY RAIMONDO, LOUIS
MOLIKEN, RAIMONDO
CONSTRUCTION, INC. and JOHN DOES
1-125,

Defendants

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK

CIVIL ACTION NO. 05CV 6843
(RJH)(MHD)

**ANSWER, AFFIRMATIVE DEFENSES
AND JURY DEMAND OF
LOUIS MOLIKEN**

Defendant Louis Moliken ("Mr. Moliken") answering the complaint of plaintiffs, New York Hotel Trades Council and Hotel Association of New York City Inc., Health Center, Inc. ("Health Center, Inc.") and Peter Ward and Joseph E. Spinnato as Trustees (together, "Trustees")

of the New York Hotel Trades Council and Hotel Association of New York City Inc. Health Benefits Fund (the “NYHTC Health Benefits Fund”) (collectively, “Plaintiffs”), says as follows:

AS TO THE NATURE OF ACTION

1. Insofar as the allegations contained in paragraph 1 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 1 of the Complaint pertain to Mr. Moliken, the allegations are denied.

2. Other than to admit Health Center, Inc. entered into a construction contract with C. Raimondo & Sons Construction Co., Inc. (“Contractor”), the allegations contained in paragraph 2 as to Mr. Moliken are denied.

3. Insofar as the allegations contained in paragraph 3 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 3 of the Complaint pertain to Mr. Moliken, the allegations are denied.

AS TO JURISDICTION AND VENUE

4. Other than to deny that he is a “party in interest” or “fiduciary” or that he misused or caused the misuse of ERISA plan funds, Mr. Moliken neither admits nor denies the allegations contained in paragraph 4 of the Complaint as the same constitute legal conclusions for which Mr. Moliken is not obligated to provide a response.

5. Insofar as the allegations contained in paragraph 5 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 5 of the Complaint pertain to Mr. Molken, the allegations are denied.

6. Insofar as the allegations contained in paragraph 6 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 6 of the Complaint pertain to Mr. Moliken, the allegations are denied.

7. Mr. Moliken neither admits nor denies the allegations contained in paragraph 7 of the Complaint as the same constitute legal conclusions for which Mr. Moliken is not obligated to provide a response.

8. Insofar as the allegations contained in paragraph 8 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 8 of the Complaint pertain to Mr. Moliken, the allegations are denied.

9. Mr. Moliken neither admits nor denies the allegations contained in paragraph 9 of the Complaint as the same constitute legal conclusions for which Mr. Moliken is not obligated to provide a response.

AS TO THEE PARTIES

(a) Plaintiffs

10. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and leaves Plaintiffs to their proofs.

11. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and leaves Plaintiffs to their proofs.

12. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and leaves Plaintiffs to their proofs.

13. Other than to deny Mr. Moliken stole, misappropriated and/or caused the theft or misappropriation of Plan Assets, Mr. Moliken has insufficient knowledge to form a belief as to

the truth of the allegations contained in paragraph 13 of the Complaint and leaves Plaintiffs to their proofs.

14. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and leaves Plaintiffs to their proofs.

(b) Defendants

15. Insofar as the allegations contained in paragraph 15 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 15 of the Complaint pertain to Mr. Moliken, the allegations are denied.

16. Insofar as the allegations contained in paragraph 16 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 16 of the Complaint pertain to Mr. Moliken, the allegations are denied.

17. Insofar as the allegations contained in paragraph 17 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 17 of the Complaint pertain to Mr. Moliken, the allegations are denied.

18. Insofar as the allegations contained in paragraph 18 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 18 of the Complaint pertain to Mr. Moliken, the allegations are denied.

19. Insofar as the allegations contained in paragraph 19 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 19 of the Complaint pertain to Mr. Moliken, the allegations are denied.

20. Insofar as the allegations contained in paragraph 20 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 20 of the Complaint pertain to Mr. Moliken, the allegations are denied.

21. Mr. Moliken admits only that he is a citizen of Pennsylvania who served as Chief Financial Officer of Raimondo Construction Corporation. Mr. Moliken denies the remaining allegations contained in paragraph 21.

22. Insofar as the allegations contained in paragraph 22 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as the allegations contained in paragraph 22 of the Complaint pertain to Mr. Moliken, the allegations are denied.

23. Insofar as the allegations contained in paragraph 23 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 23 of the Complaint pertain to Mr. Moliken, the allegations are denied.

AS TO THE FACTUAL BACKGROUND

24. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint and leaves Plaintiffs to their proofs.

25. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint and leaves Plaintiffs to their proofs.

26. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and leaves Plaintiffs to their proofs.

27. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint and leaves Plaintiffs to their proofs.

28. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint and leaves Plaintiffs to their proofs.

29. Insofar as the allegations contained in paragraph 29 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions or a recitation of terms of a document that speaks for itself, Mr. Moliken makes no answer thereto.

30. Insofar as the allegations contained in paragraph 30 of the Complaint consist of legal conclusions, Mr. Moliken makes no answer thereto.

31. Insofar as the allegations contained in paragraph 31 of the Complaint consist of legal conclusions or do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 31 of the Complaint pertain to Mr. Moliken, the allegations are denied.

32. Insofar as the allegations contained in paragraph 32 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 32 of the Complaint pertain to Mr. Moliken, the allegations are denied.

33. Insofar as the allegations contained in paragraph 33 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as the allegations contained in paragraph 33 of the Complaint pertain to Mr. Moliken, the allegations are denied.

34. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint and leaves Plaintiffs to their proofs.

AS TO THE LITIGATION BACKGROUND

35. Insofar as the allegations contained in paragraph 35 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto.

36. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint and leaves Plaintiffs to their proofs.

37. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint and leaves Plaintiffs to their proofs.

38. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint and leaves Plaintiffs to their proofs.

39. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint and leaves Plaintiffs to their proofs.

40. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint and leaves Plaintiffs to their proofs.

41. Insofar as the allegations contained in paragraph 41 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

42. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint and leaves Plaintiffs to their proofs.

43. Insofar as the allegations contained in paragraph 43 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 43 of the Complaint pertain to Mr. Moliken, the allegations are denied.

44. Insofar as the allegations contained in paragraph 44 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

45. Insofar as the allegations contained in paragraph 45 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

AS TO DEFENDANTS' ALLEGED WRONGFUL ACTIONS AGAINST PLAINTIFFS

46. Insofar as the allegations contained in paragraph 46 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 46 of the Complaint pertain to Mr. Moliken, the allegations are denied.

47. Insofar as the allegations contained in paragraph 47 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 47 of the Complaint pertain to Mr. Moliken, the allegations are denied.

48. Insofar as the allegations contained in paragraph 48 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 48 of the Complaint pertain to Mr. Moliken, the allegations are denied.

49. Insofar as the allegations contained in paragraph 49 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 49 of the Complaint pertain to Mr. Moliken, the allegations are denied.

50. Insofar as the allegations contained in paragraph 50 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 50 of the Complaint pertain to Mr. Moliken, the allegations are denied.

51. Insofar as the allegations contained in paragraph 51 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as the allegations contained in paragraph 51 of the Complaint pertain to Mr. Moliken, the allegations are denied.

52. Insofar as the allegations contained in paragraph 52 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as the allegations contained in paragraph 52 of the Complaint pertain to Mr. Moliken, the allegations are denied.

53. Insofar as the allegations contained in paragraph 53 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as the allegations contained in paragraph 53 of the Complaint pertain to Mr. Moliken, the allegations are denied.

54. Insofar as the allegations contained in paragraph 54 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 54 of the Complaint pertain to Mr. Moliken, the allegations are denied.

55. Insofar as the allegations contained in paragraph 55 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 55 of the Complaint pertain to Mr. Moliken, the allegations are denied.

56. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint and leaves Plaintiffs to their proofs.

57. Insofar as the allegations contained in paragraph 57 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 57 of the Complaint pertain to Mr. Moliken, the allegations are denied.

58. Insofar as the allegations contained in paragraph 58 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 58 of the Complaint pertain to Mr. Moliken, the allegations are denied.

59. Insofar as the allegations contained in paragraph 59 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

60. Insofar as the allegations contained in paragraph 60 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

61. Insofar as the allegations contained in paragraph 61 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 61 of the Complaint pertain to Mr. Moliken, the allegations are denied.

62. Insofar as the allegations contained in paragraph 62 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 62 of the Complaint pertain to Mr. Moliken, the allegations are denied.

63. Insofar as the allegations contained in paragraph 63 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 63 of the Complaint pertain to Mr. Moliken, the allegations are denied.

64. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint and leave Plaintiffs to their proofs.

65. Insofar as the allegations contained in paragraph 65 of the Complaint do not pertain to Mr. Moliken or consist of the recitation of a document that speaks for itself, he make no answer thereto.

66. Insofar as the allegations contained in paragraph 66 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 66 of the Complaint pertain to Mr. Moliken, the allegations are denied.

67. Insofar as the allegations contained in paragraph 67 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as

the allegations contained in paragraph 67 of the Complaint pertain to Mr. Moliken, the allegations are denied.

68. Insofar as the allegations contained in paragraph 68 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 68 of the Complaint pertain to Mr. Moliken, the allegations are denied.

69. Insofar as the allegations contained in paragraph 69 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 69 of the Complaint pertain to Mr. Moliken, the allegations are denied.

70. Insofar as the allegations contained in paragraph 70 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 70 of the Complaint pertain to Mr. Moliken, the allegations are denied.

71. Insofar as the allegations contained in paragraph 71 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto.

72. Insofar as the allegations contained in paragraph 72 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 72 of the Complaint pertain to Mr. Moliken, the allegations are denied.

73. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 73 of the Complaint as to Plaintiff's knowledge and leave Plaintiffs to their proofs. Insofar as the allegations contained in paragraph 73 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

74. Insofar as the allegations contained in paragraph 74 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as

the allegations contained in paragraph 74 of the Complaint pertain to Mr. Moliken, the allegations are denied.

75. Insofar as the allegations contained in paragraph 75 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 75 of the Complaint pertain to Mr. Moliken, the allegations are denied.

76. Insofar as the allegations contained in paragraph 76 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto; Insofar as the allegations contained in paragraph 76 of the Complaint pertain to Mr. Moliken, the allegations are denied.

77. Insofar as the allegations contained in paragraph 77 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 77 of the Complaint pertain to Mr. Moliken, the allegations are denied.

78. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint and leaves Plaintiffs to their proofs.

79. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 79 of the Complaint and leaves Plaintiffs to their proofs.

80. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint and leaves Plaintiffs to their proofs.

81. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 81 of the Complaint and leaves Plaintiffs to their proofs.

82. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint and leave Plaintiffs to their proofs.

83. Defendants have insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 83 of the Complaint and leaves Plaintiffs to their proofs.

84. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 84 of the Complaint and leaves Plaintiffs to their proofs.

85. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 85 of the Complaint and leaves Plaintiffs to their proofs.

86. The allegations contained in paragraph 86 are denied.

87. Insofar as the allegations contained in paragraph 87 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 87 of the Complaint pertain to Mr. Moliken, the allegations are denied.

88. Except to deny misrepresentations, Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 88 of the Complaint and leaves Plaintiffs to their proofs.

89. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint and leaves Plaintiffs to their proofs.

90. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 90 of the Complaint and leaves Plaintiffs to their proofs.

91. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint and leaves Plaintiffs to their proofs.

92. Insofar as the allegations contained in paragraph 92 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

93. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 93 of the Complaint and leaves Plaintiffs to their proofs.

94. Insofar as the allegations contained in paragraph 94 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

95. Insofar as the allegations contained in paragraph 95 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

96. Insofar as the allegations contained in paragraph 96 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

97. Insofar as the allegations contained in paragraph 97 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

98. Mr. Moliken has insufficient knowledge at this time to form a belief as to the truth of the allegations contained in paragraph 98 of the Complaint and leaves Plaintiffs to their proofs.

99. Insofar as the allegations contained in paragraph 99 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 99 of the Complaint pertain to Mr. Moliken, the allegations are denied.

100. Insofar as the allegations contained in paragraph 100 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto.

101. Insofar as the allegations contained in paragraph 101 of the Complaint consist of legal conclusions, Mr. Moliken makes no answer thereto. Insofar as the allegations contained in paragraph 101 of the Complaint pertain to Mr. Moliken, the allegations are denied.

102. The allegations contained in paragraph 102 are denied.

103. Insofar as the allegations contained in paragraph 103 of the Complaint consist of legal conclusions, Mr. Moliken makes no answer thereto.

104. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint and leaves Plaintiffs to their proofs.

105. Insofar as the allegations contained in paragraph 105 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto.

106. Insofar as the allegations contained in paragraph 106 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 106 of the Complaint pertain to Mr. Moliken, the allegations are denied.

107. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 107 of the Complaint and leaves Plaintiffs to their proofs.

108. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 108 of the Complaint and leaves Plaintiffs to their proofs.

109. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 109 of the Complaint and leaves Plaintiffs to their proofs.

110. Insofar as the allegations contained in paragraph 110 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 110 of the Complaint pertain to Mr. Moliken, the allegations are denied.

111. Insofar as the allegations contained in paragraph 111 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto. Insofar as the allegations contained in paragraph 111 of the Complaint pertain to Mr. Moliken, the allegations are denied.

112. Insofar as the allegations contained in paragraph 112 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 112 of the Complaint pertain to Mr. Moliken, the allegations are denied.

113. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 113 of the Complaint and leaves Plaintiffs to their proofs.

114. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 114 of the Complaint and leaves Plaintiffs to their proofs.

115. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 115 of the Complaint and leave Plaintiffs to their proofs.

116. Insofar as the allegations contained in paragraph 116 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 116 of the Complaint pertain to Mr. Moliken, the allegations are denied.

THE PRESENT ACTION

117. Insofar as the allegations contained in paragraph 117 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 117 of the Complaint pertain to Mr. Moliken, Mr. Moliken denies any wrongful acts and has insufficient knowledge to form a belief as to the truth of the balance of the allegations contained in paragraph 117 of the Complaint and leaves Plaintiffs to their proofs.

118. Insofar as the allegations contained in paragraph 118 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 118 of the Complaint pertain to Mr. Moliken, the allegations are denied.

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty Under ERISA)

119. Mr. Moliken repeats and realleges his answers to paragraphs 1 through 118 of the Complaint as if the same were set forth at length herein.

120. Insofar as the allegations contained in paragraph 120 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 120 of the Complaint pertain to Mr. Moliken, the allegations are denied.

121. Insofar as the allegations contained in paragraph 121 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto.

122. Insofar as the allegations contained in paragraph 122 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 122 of the Complaint pertain to Mr. Moliken, the allegations are denied.

SECOND CLAIM FOR RELIEF

(ERISA § 406(b) Prohibited Transactions by Individual Defendants)

123. Mr. Moliken repeats and realleges his answers to paragraphs 1 through 122 of the Complaint as if the same were set forth at length herein.

124. Insofar as the allegations contained in paragraph 124 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 124 of the Complaint pertain to Mr. Moliken, the allegations are denied.

THIRD CLAIM FOR RELIEF

(ERISA § 406(a) Prohibited Transactions by Individual Defendants, Defendant RCI and Defendants Does 1-125)

125. Mr. Moliken repeats and realleges his answers to paragraphs 1 through 124 of the Complaint as if the same were set forth at length herein.

126. Insofar as the allegations contained in paragraph 126 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 126 of the Complaint pertain to Mr. Moliken, the allegations are denied.

127. Insofar as the allegations contained in paragraph 127 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 127 of the Complaint pertain to Mr. Moliken, the allegations are denied.

128. Insofar as the allegations contained in paragraph 128 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 128 of the Complaint pertain to Mr. Moliken, the allegations are denied.

129. Insofar as the allegations contained in paragraph 129 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 129 of the Complaint pertain to Mr. Moliken, the allegations are denied.

FOURTH CLAIM FOR RELIEF

(Fraud)

130. Mr. Moliken repeats and realleges his answers to paragraphs 1 through 129 of the Complaint as if the same were set forth at length herein.

131. Insofar as the allegations contained in paragraph 131 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 131 of the Complaint pertain to Mr. Moliken, the allegations are denied.

132. Insofar as the allegations contained in paragraph 132 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 132 of the Complaint pertain to Mr. Moliken, the allegations are denied.

133. Insofar as the allegations contained in paragraph 133 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 133 of the Complaint pertain to Mr. Moliken, the allegations are denied.

134. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 134 of the Complaint and leaves Plaintiffs to their proofs.

135. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 135 of the Complaint and leave Plaintiffs to their proofs.

136. Mr. Moliken has insufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 136 of the Complaint and leave Plaintiffs to their proofs.

137. Insofar as the allegations contained in paragraph 137 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 137 of the Complaint pertain to Mr. Moliken, the allegations are denied.

138. Insofar as the allegations contained in paragraph 138 of the Complaint do not pertain to Defendants, Defendants make no answer thereto. Insofar as the allegations contained in paragraph 138 of the Complaint pertain to Defendants, the allegations are denied.

FIFTH CLAIM FOR RELIEF

(Conversion)

139. Mr. Moliken repeats and realleges his answers to paragraphs 1 through 138 of the Complaint as if the same were set forth at length herein.

140. Insofar as the allegations contained in paragraph 140 of the Complaint do not pertain to Mr. Moliken or consist of legal conclusions, he makes no answer thereto.

141. Insofar as the allegations contained in paragraph 141 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 141 of the Complaint pertain to Mr. Moliken, the allegations are denied.

142. Insofar as the allegations contained in paragraph 142 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 142 of the Complaint pertain to Mr. Moliken, the allegations are denied.

143. Insofar as the allegations contained in paragraph 143 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 143 of the Complaint pertain to Mr. Moliken, the allegations are denied.

144. Insofar as the allegations contained in paragraph 144 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 144 of the Complaint pertain to Mr. Moliken, the allegations are denied.

145. Insofar as the allegations contained in paragraph 145 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 145 of the Complaint pertain to Mr. Moliken, the allegations are denied.

146. Insofar as the allegations contained in paragraph 146 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 146 of the Complaint pertain to Mr. Moliken, the allegations are denied.

SIXTH CLAIM FOR RELIEF

(Unjust Enrichment)

147. Mr. Moliken repeats and realleges his answers to paragraphs 1 through 146 of the Complaint as if the same were set forth at length herein.

148. Insofar as the allegations contained in paragraph 148 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 148 of the Complaint pertain to Mr. Moliken, the allegations are denied.

149. Insofar as the allegations contained in paragraph 149 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 149 of the Complaint pertain to Mr. Moliken, the allegations are denied.

SEVENTH CLAIM FOR RELIEF

(For Payment of Judgment Entered on Arbitration Award)

150. Mr. Moliken repeats and realleges his answers to paragraphs I through 149 of the Complaint as if the same were set forth at length herein.

151. Insofar as the allegations contained in paragraph 151 of the Complaint do not pertain to Mr. Moliken, he makes no answer thereto. Insofar as the allegations contained in paragraph 151 of the Complaint pertain to Mr. Moliken, the allegations are denied.

WHEREFORE, Defendants, Lou Moliken, denies that Plaintiffs are entitled to a judgment against him and instead demands judgment dismissing the Complaint, with prejudice, and awarding attorneys' fees and costs of suit and such other relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint, in whole or in part, rails to state a claim against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Damages, if any, sustained by Plaintiffs are the direct and proximate result of Plaintiffs' own acts, negligence and/or omissions.

THIRD AFFIRMATIVE DEFENSE

Defendant had no contractual relationship with Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

Defendant did not owe any duty to Plaintiffs.

FIFTH AFFIRMATIVE DEFENSES

Defendant is not personally liable on any contracts between contractor C. Raimondo & Sons Construction Co., Inc. and Plaintiffs.

SIXTH AFFIRMATIVE DEFENSE

Defendants are not personally liable for any judgments or awards against contractor C. Raimondo & Sons Construction Co., Inc.

SEVENTH AFFIRMATIVE DEFENSE

Defendant did not dominate or control contractor C. Raimondo & Sons Construction Co., Inc.

EIGHTH AFFIRMATIVE DEFENSE

Damages, if any, sustained by Plaintiffs are the direct and proximate result of actions, negligence and/or omissions of third parties over whom Defendant exercised no authority or control.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs did not confer any benefits upon Defendants.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, by the doctrines of waiver, estoppel and/or laches.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant did not owe any duties and are not liable under any provisions of the Employee Retirement Income Security Act of 1974, as amended.

TWELFTH AFFIRMATIVE DEFENSE

Defendant is not a fiduciary as defined by ERISA and exercised no discretionary authority or control over the management of the NYHTC Benefits Fund or the management or disposition of its assets.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant is not a party in interest as defined by ERISA.

FOURTEENTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over this action.

FIFTEENTH AFFIRMATIVE DEFENSE

The Court lacks in personam jurisdiction over Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendant is barred by the arbitration and award already obtained by Plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendant are barred by the applicable statutes of limitation.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to an award of attorneys' fees as a matter of fact or as a matter of law.

WHEREFORE, Defendant, Lou Moliken, denies that Plaintiffs are entitled to a judgment against him and instead demands judgment dismissing the Complaint, with prejudice, and awarding attorneys' fees and costs of suit and such other relief as the Court deems just and equitable.


JURY DEMAND

Defendant, Lou Moliken, demands a trial by jury as to all issues so triable.

DILWORTH PAXSON LLP
Attorneys for Defendant, Louis Moliken

Dated: *November 14, 2005*

By: _____


Holly R. Rogers, Esquire
David M. Laigaie, Esquire